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*ADMITTED IN NEW YORK AND VIRGINIA ONLY

March 27, 1985

Mr. George R. Snider, Jr.
Director of Marketing Services
B.F. Goodrich Company
Chemical Group
6100 Oak Tree Boulevard
Cleveland, Ohio 44131

Dear George:

This letter is to report to the Ad Hoc Pipe Resins Producers Group concerning the developments in California related to the completion of the Environmental Impact Report. We are distributing to the Committee John Stohlton's letter of March 21, 1985 concerning the on-going negotiations with SRI over the payments due under SRI's contract to complete the Environmental Impact Report.

By way of background for those members of the Committee who have not heretofore been aware of the on-going negotiations, SRI has been seeking additional money from the state in order to complete the EIR on Plastic Pipe. As you know, industry has made it clear to the state that it finds SRI's request for additional funds excessive, and that it would only entertain paying reasonable additional funds that may be required due to the time lapse since SRI completed the EIR document. We believe that industry has been successful in convincing the Attorney General's office that it needs to take a strong position with SRI on its obligations under the original contract which it signed to complete the EIR. A copy of the draft letter which will be sent by the Attorney General to SRI reflects this position (copy enclosed with John's letter).

As members of the Committee may recall, SRI's original environmental review document suggested that additional studies be completed on plumbers' health in connection with the use of plastic pipe. Industry has taken the

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Mr. George R. Snider, Jr.
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KELLER AND HECKMAN

position that in view of the recent NIOSH study, there is no need for further research in this area. Industry's position will be represented by Arthur Furst, an eminent toxicologist. Dr. Furst is in the process of preparing a letter to be submitted into the record, setting forth the basis for his professional opinion that no further studies are needed in this area. That document should be ready for submission to the State of California within the next few weeks. The Union, likewise, will be submitting similar position papers to the state, undoubtedly recommending that further studies be completed. Indications are, however, that officials within the California Department of Housing do not believe that further studies will be necessary. This issue must be run through appropriate agencies within the state bureaucracy, including CalOSHA, for their consensus. We hope to be in a position to finalize that issue when Versar's leaching tests are completed.

We will be circulating copies of Dr. Furst's letter for the information of Committee members when it is submitted to the State of California, and we will be reporting back to you on any further developments with regard to the funding issue with SRI. Of course, if you or other members of the Committee have any questions in the meantime, please feel free to give us a call.

Cordially yours,

Christine A. Meagher

Enclosures

cc: Ad Hoc Pipe Resins Producers Committee

TEN 3173

TEN 42155.61



Brigham Young University

John B. Stahlton

March 21, 1985

Christine Meagher
Keller & Heckman
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036

Dear Christine:

I am enclosing a copy of the draft letter which we have transmitted to Julie Nauman for referral to Edna Walsh of the California Attorney General's office. If the letter meets with Julie's and Edna's approval, it will be retyped on Attorney General's stationery and signed by Edna Walsh.

The letter that was eventually sent represents a composite of the letter I originally drafted and the redraft performed by Bill Holliman. The only major change I made in Holliman's draft was the removal of the first full paragraph on page 3. In that paragraph Holliman had suggested that we commit ourselves to a dollar amount that we would offer SRI at this time. That concept was strongly opposed by George Snider and Allen Olsen. I agree with that decision.

Julie Nauman has told me that the set up went very well at VERSAR. VERSAR reconstructed the test apparatus in accordance with the test protocol and no problems were encountered. Dave Spath witnessed the set up and he was wholly satisfied with its construction.

I have further been informed by Julie that the test commenced on Wednesday, March 20. I expect VERSAR to provide us with an updated schedule for the testing program in the very near future. As soon as that schedule is available I will pass it on to you.

Allen Olsen has informed me that the metals testing program probably commenced today, March 21st. Allen's ability to initiate the program is sharply contrasted by our VERSAR experience. In VERSAR's defense, it probably should be said that many of the delays have been created by the State and not VERSAR.

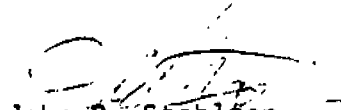
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Christine Meagher
March 21, 1985
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Should you have any questions or suggestions, please do not hesitate to let me know.

Sincerely,



John B. Stohlton

JBS:vb

Enclosure

cc: Allen Olsen
George Snider
John Lawrence
Ronald Frano
Ralph Heim

TEN 3175

TEN 42155.63

Mr. Sidney J. Everett
Program Manager
Technology Evaluation
SRI International
333 Ravenswood Avenue
Menlo Park, California 94026

Dear Mr. Everett:

At the request of the Department of Housing and Community Development, we have reviewed the contract between the State of California and SRI for preparation of an Environmental Impact Report on a proposal for expanded use of specified plastic pipe materials for potable water and drain/waste/vent purposes. In connection therewith, we have reviewed the request for proposals promulgated by the Department, SRI's proposal and subsequent amendments thereto, and the contract documents, as amended, including definition of the scope of work, performance schedule, and payment schedule. The contract was amended to extend its term through December 6, 1985, unless terminated by the State prior to that time, pursuant to the provisions of Section 6 of the contract.

We believe that an understanding of the provisions of the contract and the obligations of the parties to the contract is essential toward reaching a resolution of the conflicts which have arisen between the parties. We have reviewed SRI's letters of April 12, 1984, July 30, 1984, and December 21, 1984 and we find that the positions stated therein are inconsistent with provisions of the contract, as amended.

The original contract entered into between the State and SRI on August 16, 1982, established a total fixed price of \$202,827.00. The State accepted SRI's bid in that amount, even though SRI was the highest bidder in the selection process. When objections were raised to the contract price, SRI defended its position by asserting that SRI is uniquely suited and qualified to perform under the contract, that it fully understood the complexity of the project, and that it would be unnecessary for the State to face subsequent demands for additional compensation in order to assure completion of the project. Mr. Moore stated in his July 29, 1982 letter to then Director, I. Donald Turner:

We are aware of the highly controversial nature of the subject EIR and of the protracted negotiations among members of the Task Force and the Department which preceded the conditional award of the contract to SRI. In light of these concerns we propose the revisions described below. We hope that these changes will ensure that future interaction with the Department and Task Force will be characterized by cooperation and support, during both the preparation of the study and the review of its results.

Mr. Sidney J. Everett
March 20, 1985
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While the Department is not unsympathetic to your representations that SRI incurred cost overruns in completing the Public Health Section and Environmental Review Document tasks, there is no provision in the contract for reimbursement to SRI for such cost overruns. It would appear that such cost overruns were, in whole or in part, a result of SRI's failing to understand the scope of the project and to assess its time and costs. Reimbursement for such cost overruns may not be made from contract monies allocated to subsequent tasks. Nevertheless, the State has offered to minimize the excess costs incurred by SRI by offering to pay for all printing charges associated with completion of the EIR, an amount which approximates \$15,000.

We are informed that unforeseen and extraordinary delays have occurred since the submittal of SRI's environmental review document. We acknowledge that the passage of time may have resulted in increased costs to SRI for completion of the project and that some adjustment in the contract allocations for the remaining tasks should be considered. In reviewing your December 21, 1984 letter, however, it appears that SRI would unilaterally redefine the project in justifying its claim for additional compensation. It is our legal opinion that there is no justification under CEQA for SRI to revise the Environmental Review Document or to "alter [your] perspective on the remaining work." We can understand that the time delays necessitate a review and update of the principal findings in the Environmental Review Document and the need to examine the additional materials which have been submitted into the administrative record. It is neither necessary nor desirable, however, that the Environmental Review Document be rewritten.

The Environmental Review Document recommended that two issues be addressed and resolved prior to the preparation of the draft EIR. The water quality testing is under way at VERSAR and the workers' safety issue is under study by a task force consisting of a variety of State agencies. We anticipate that information concerning both issues will be submitted to SRI for evaluation in the relatively near future. Once that information has been received by SRI, SRI should be in a position to move forward with preparation of the draft EIR.

The Department has discussed the compensation issue with members of the industry and there has been a willingness by industry to compensate SRI for reasonable additional costs which will be incurred by SRI as a result of the time delays. Industry has agreed to provide

Sidney Everett
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funds for the necessary computer search, the review of the administrative record, and the additional overhead and salary costs occasioned between the time of the bid and the completion of the project.

We simply must indicate, however, that the State has neither an obligation nor authority to compensate SRI for an improvident bid proposal. Accordingly, it is our position that the remaining contract monies on hand less that portion applicable to Task I and withheld pursuant to the contract, will not be paid until the appropriate remaining tasks are completed. Any additional funds agreed upon will be payable upon completion of remaining tasks in accordance with such agreement.

We are, perhaps, most concerned with an apparent misunderstanding as to the scope and quality of the product contemplated by the contract. The contract specifies that the project will be completed according to the terms and procedures of the California Environmental Quality Act and State Guidelines and will result in an "adequate EIR." The term "adequate EIR" has been frequently defined by the courts of the State and refers to an EIR which complies with provisions of CEQA and the State Guidelines and is certifiable as adequate and complete under California law. The State did not contract for merely a scientific treatise or any other document which would not meet such legal standards. Failure to produce such a document would constitute a breach of contract.

We are anxious to resolve the existing conflicts as quickly as possible and to facilitate completion of the project. We would urge you to reevaluate your position. In doing so, you will be interested to know that the Department has indicated what additional Task Force meetings will be deleted from the existing schedule. We have provided copies of this letter to your general counsel, Geoffrey Steel, Esq., and to Dr. William F. Miller, President, for their review and consideration. We suggest that their review may facilitate resolution of the issues and completion of the project. Representatives of the State will be happy to meet with you at your earliest convenience to finalize any necessary contract amendments.

We would appreciate a written response to this letter within the next fourteen (14) days.

Sincerely,

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